



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

TESTIMONY PRESENTED BEFORE THE AGING COMMITTEE
March 3, 2011

Wendy Furniss, Branch Chief, Health Care Systems Branch

**Senate Bill 3 - An Act Concerning Criminal Background Checks For Employees Of Homemaker-
Companion Agencies And Home Health Agencies**

The Department of Public Health recommends the following changes to Senate Bill 3:

This legislation helps to address the important issue of oversight with respect to individuals offering long-term care services in our community. For too long, the state has not been able to effectively ensure that personnel providing care to those requiring in home assistance are safe and trustworthy. By requiring that employers take the basic step of conducting a comprehensive criminal background check on applicants, we can begin to address that issue.

To that end, the Department of Public Health was the recipient of a US Department of Health and Human Services grant in the amount of \$1.9 million made available under the Patient Protection and Accountable Care Act. With this money, Connecticut would be able to implement a program of comprehensive background checks on all individuals in the state with direct access to long-term care patients in either community or institutional settings. For the purposes of being able to implement a state-wide background check program utilizing the funds awarded under this federal grant and furthering the goals of the underlying legislation, the department respectfully requests that the committee consider the attached proposal as substitute language for this bill. This substitute language is part of an ongoing discussion between DPH and sister agencies to decide on how best to implement this program. The proposed language is necessary in order to meet the terms of the federal grant. We hope that you can review this proposal and that we can work with the committee to promote this concept moving forward.

Thank you for your consideration of the department's views on this bill.

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(NEW): Criminal history and patient abuse background record search for certain employees or independent contractors.

(a) Notwithstanding the provisions of section 46a-80, and except as otherwise provided in subsections (c) through (e), a health facility or agency that is a long-term care facility or provider shall not employ or independently contract with an individual who has direct access to or provides direct services to patients or residents if the individual satisfies one or more of the following:

(1) Has been convicted of any the following crimes as described in section 1128(a) of the Social Security Act, 42 USC 1320a-7:

(i) Conviction of program-related crimes.—Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.

(ii) Conviction relating to patient abuse.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(iii) Felony conviction relating to health care fraud.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)(i)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(2) Is the subject of a substantiated finding of neglect, abuse or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3(g)(1)(C) or 1396r(g)(1)(C).

(b) Each long-term care facility or provider shall require that each individual to which this section applies submit to state and national criminal history records checks. The criminal history records checks required by this section shall be conducted in accordance with section 29-17a.

(c) The requirements of this section shall not apply to: (1) Any individual who has direct access to or provides direct services to patients or residents who is employed by, or under independent contract with, a long-term care facility or provider prior to the effective date of this section. If said individual transfers to another long-term care facility or provider subsequent to the effective date of this section, the requirements of this section shall apply to said individual. (2) Any individual who provides proof to a long-term care facility or provider that a background check of said individual under this section has been conducted within the immediately preceding 3 years and the background check did not disclose that the individual possessed any of the disqualifying offenses. (3) Any volunteer, unless said

volunteer has duties that are equivalent to the duties of an employee who has direct access to or provides direct services to patients or residents in a long-term care facility or provider.

(d) If a long-term care facility or provider determines it necessary to employ an individual before receiving the results of the applicant's criminal history check under this section, the long-term care facility or provider may conditionally employ the individual for a period not to exceed 60 days, and pending the opportunity for and completion of any waiver process conducted under subsection (e) concerning the result of the criminal history and background check, if all the following apply:

(1) The individual signs a statement in writing indicating:

(i) That he or she is not subject to one or more grounds for disqualification as set forth in subsection (a); and

(ii) That he or she agrees that, if the information in the background check conducted under this section does not confirm the individual's written statement, his or her employment will be terminated by the long-term care facility or provider as required under subsection (a) and that these conditions are good cause for termination;

(2) The long-term care facility or provider requests the criminal history and background checks under this section upon conditionally employing the individual; and

(3) The long-term care facility or provider shall assure that the individual is subject to direct, on-site supervision during the course of any conditional employment.

(e) The Department of Public Health shall provide an individual with written notice of disqualification under this section by certified mail to the address provided to the Department of Public Health pursuant to the criminal history and patient abuse background record search program implemented under subsection (h). Any individual who wishes to seek a waiver from a notice of disqualification issued pursuant to the background check performed under this section shall, not later than thirty days after the Department of Public Health's mailing of the notice of disqualification, file with the Department of Public Health a request in writing for a waiver from the disqualification. The Department of Public Health may grant a waiver from notice of disqualification based upon mitigating circumstances identified by the individual, which may include, but need not be limited to: (1) the accuracy of information obtained during the background check process; (2) the nature of the disqualifying offense and its relationship to the job for which the person has applied; (3) information pertaining to the degree of rehabilitation related to the disqualifying offense; (4) extenuating circumstances surrounding the disqualifying offense; and (5) the time elapsed since the disqualifying offense. The Department of Public Health and any of its employees shall be immune from liability for any waivers granted under this section. A long-term care facility or provider is not obligated to employ or offer permanent employment to an individual who is granted a waiver under this subsection.

(f) As used in this section "direct access" or "direct services" means direct physical proximity to a patient or resident that affords the opportunity to commit abuse or neglect or to misappropriate the property of a patient or resident.

(g) As used in this section, "long-term care facility or provider" means a health facility or agency that is a nursing home, long-term hospital, provider of hospice care, assisted living services

agency, intermediate care facility for the mentally retarded, provider of personal care services, home health care agency or residential care home that arranges for, or directly provides, long-term care services.

- (h) If upon review, investigation or inspection pursuant to section 19a-498, the Commissioner of Public Health determines that a nursing home, long-term hospital, provider of hospice care, assisted living services agency, home health care agency or residential care home that arranges for, or directly provides, long-term care services has violated any provision of this section, the Commissioner shall immediately issue or cause to have issued a citation to the license of such aforementioned facility. Governmental immunity shall not be a defense to any citation issued or civil penalty imposed pursuant to sections 19a-524 to 19a-528, inclusive. Each citation shall be in writing, shall provide the notice of the nature and scope of the alleged violation and shall be sent by certified mail to the licensee at the address of the facility in issue. For each such violation, a civil money penalty of one thousand dollars shall be imposed.
- (i) This act shall take effect the later of July 1, 2011 or on the date notice is published by the Commissioner of Public Health in the Connecticut Law Journal indicating that, and the extent to which, this criminal history and patient abuse background record search program is being implemented by the Commissioner of Public Health, and shall only be implemented and continued if appropriations are available. The Department of Public Health may promulgate regulations to implement the provisions of this statute.